APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT DATED AND FILED APRIL 23, 1999

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 98-08635

Non-Argument Calendar
D. C. Docket No. CR-497-231

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

WILLIE HICKS, ANTHONY DAILEY,

Defendants-Appellants.

Appeals from the United States District Court
for the Southern District of Georgia

(April 23, 1999)

Before HATCHETT, Chief Judge, COX and BLACK, Circuit Judges.

PER CURIAM:

Willie Hicks and Anthony Dailey appeal their convictions of conspiracy to possess with intent to distribute

cocaine and cocaine base, in violation of 21 U.S.C. § 846, possession with intent to distribute cocaine base, in violation of 21 U.S.C. § 841(a)(1), and distribution of cocaine base, in violation of 21 U.S.C. § 841(a)(1).[1]

On appeal, Hicks and Dailey contend that the district court erred by: (1) excusing two prospective jurors without determining whether they were qualified to serve; (2) denying their motion for a new trial after the Government provided post-trial notice that its primary witness had given false information to the Government about the investigation; and (3) denying their motions for judgment of acquittal on Count 13 because there was insufficient evidence to prove beyond a reasonable doubt that either defendant possessed crack cocaine with the intent to distribute. Additionally, Hicks contends that the court erred by denying his motion to suppress.

We review the district court's *sua sponte* determination to excuse a juror for a manifest abuse of discretion. *See United States v. Simmons*, 961 F.2d 183, 184 (11th Cir. 1992). We conclude that the district court's decision to excuse one juror for failing to comply with instructions regarding the dress code[2] and another for having a

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1. Dailey was also convicted for using and carrying a firearm in relation to a drug trafficking crime, in violation of 18 U.S.C. § 924(c), and for being a felon in possession of a firearm, in violation of 18 U.S.C. § 922(g).

2. Appellants raised objections to excusing Chris McCall Number 38, for not being properly dressed. The trial court responded,

(Cont'd)

previous drug conviction[3] was within the court's sound discretion.

We review the denial of a motion for a new trial under an abuse of discretion standard. *See United States v. Michael*, 17 F.3d 1383, 1384 (11th Cir. 1994). Hicks and Dailey failed to show that, had they possessed the information in question, there was a reasonable probability of a different result. We conclude that the district court did not abuse its discretion in denying the motions.

This court will uphold a conviction if, after viewing the evidence in the light most favorable to the government, and drawing all reasonable inferences in its favor, " 'any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.' " *United States v. Thomas*, 987 F.2d 697, 701 (11th Cir. 1993), *citing Jackson v. Virginia*, 443 U.S. 307, 319 (1979). We conclude that there was sufficient evidence for a reasonable juror to find the defendants guilty of possession of cocaine as charged in Count 13.

Finally, the question of what amounts to probable cause is purely a question of law, and hence is subject to plenary

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(Cont'd)
"His hair was around his shoulders. He got specific instructions how to dress. We accommodate those people [that may not have a suit and tie]. . . And it just showed, to me, or demonstrated an uncaring attitude. He didn't care what the Court said to him. He was coming the way he was." (R.4-50.)

3. During voir dire, Juror Amanda Clark stated that she had been convicted of possession of marijuana.

review by this court, *See United States v. Tobin*, 923 F.2d 1506, 1510 (11th Cir. 1991) (*en banc*). The search warrant affidavit contained sufficient factual allegations and provided probable cause to support the issuance of a search warrant for Hicks' residence. Thus, we conclude that the district court committed no error in denying Hicks' Motion to Suppress.

AFFIRMED.

APPENDIX B — EXCERPTS FROM TRANSCRIPT OF JURY SELECTION OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF GEORGIA, SAVANNAH DIVISION DATED MARCH 2, 1998

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

CR 497-231

UNITED STATES OF AMERICA

PLAINTIFF,

– vs –

WILLIE HICKS and ANTHONY DAILEY

DEFENDANT.

TRANSCRIPT of the **JURY SELECTION** held on the 2nd day of March, 1998, with the HONORABLE B. AVANT EDENFIELD, JUDGE, presiding

* * *

[2] THE COURT: Mr. Clerk, sound the next group.

CLERK: The Court sound the case the United States of America versus Willie Hicks and Anthony Daley, Criminal Action 497-231.

Appendix B

THE COURT: Mr. Knoche, what announcement?

MR. KNOCHE: Ready for the government, Your Honor.

THE COURT: Mr. Jackson, are you counsel in this case?

MR. JACKSON: Yes, sir. I am for Mr. Hicks, Your Honor.

* * *

MR. JACKSON: Yes, sir. We have co-counsel, Your Honor. So I think we need to approach.

THE COURT: Right. Come up here, Mr. Knoche.

MR. HUNT: Good morning, Your Honor.

* * *

[3] * * *

THE COURT: Please continue in this case.

CLERK: Ladies and gentlemen, as your name is called, please come forward and be seated as directed by the Marshal.

Number 44, Gene Poythress.

Appendix B

Number 6, Dorothy Campbell.

Number 20, Wanda Evans.

Number 50, Willie Seymore.

[4] Number 38, Christopher McCall.

THE COURT: Wait a minute. Did you get a notice as to dress?

MR. McCALL: Your Honor, I do not own a suit or a tie.

THE COURT: Have a seat over to the side.

Call another one.

CLERK: Number 28, Cynthia Johnson.

* * *

[16] * * *

THE COURT: Ladies and gentlemen, we about to commence the voir dire or voir dire, either pronunciation is acceptable. It simply means "to tell the truth".

Some of you will be serving as judges, that is you will judge the facts. The parties have every right, as does the Court, to know something about you. These questions are not meant to harass you or vex you or embarrass you. It

simply the questions that need to be answered truthfully in order for the parties to make their selection.

Now, do any of you hold an opinion that there should be no laws prohibiting the use of controlled substance like cocaine or crack cocaine or marijuana? Are you opposed to laws that criminalize the possession, use, and distribution of that substance?

Now, have any of you ever been convicted or do you have any close friend or relative who has been prosecuted by either the State of Georgia, State of [17] South Carolina, or any jurisdiction, or the federal government on any drug charge? If so, would the back row stand? This usually elicits several. I will let the others be seated.

All of you who raised your hand on the rear row, please stand.

Give up us your name and tell us something.

MS. EVANS: My name is Wanda Evans, and I have a relative who was convicted. It was — she served time. I don't know whether that —

THE COURT: But it had something to do with drugs.

MS. EVANS: With drugs, yes, sir, crack cocaine.

THE COURT: How long ago was that?

MS. EVANS: Maybe three years, three or four years.

THE COURT: Do you feel she was mistreated by having been convicted and imprisoned?

MS. EVANS: No, not really.

THE COURT: Thank you. You may have a seat.

MR. LIVINGSTON: Samuel Livingston. I have a son who just got off of drugs, and is doing good, but I have daughter-in-law any that's serving time for possession.

[18] THE COURT: Do you feel that they have been mistreated, that either one of them were mistreated by the way the law dealt with them?

MR. LIVINGSTON: No, sir.

THE COURT: Are you quite certain of that?

MR. LIVINGSTON: Yes, sir.

THE COURT: All right. Anyone before I leave the rear row?

The front row please stand.

MS. BARNES: My name is Lisa Barnes. A friend of mine of was convicted of marijuana possession.

THE COURT: How long ago was that?

MS. BARNES: Last year.

THE COURT: Do you feel that she was mistreated in any way?

MS. BARNES: Yes, he was because it was not proven that he had possession of it.

THE COURT: Did he plead guilty or was he found guilty?

MS. BARNES: He pleaded innocent but he was found guilty.

THE COURT: Would that in any way affect your judge in this case?

MS. BARNES: Yes, I think it would because if [19] it is the same Donald Brown in the case that I went to high school with, I don't think he would —

THE COURT: I will let you step aside.

Would you substitute, Mr. Clerk?

CLERK: As your name is called, please come forward go ahead and take the vacant seat.

MS. CLARK: My name is Amanda Clark. I have been convicted of possession of marijuana and I divorced my husband because he was hooked on crack cocaine.

THE COURT: Where were you convicted of the use of marijuana?

MS. CLARK: Here in Savannah.

THE COURT: I will have to ask that you step aside.

* * *

[50] * * *

MR. JACKSON: Yes, sir. Your Honor, likewise while we are at the bench, we would as that the record reflect our objections to excusing Chris McCall Number 38, for not being properly dressed.

THE COURT: His hair was around his shoulders. He got specific instructions how to dress. We accommodate those people. We have coats and ties. And it just showed, to me, or demonstrated an uncaring attitude. He didn't care what the Court said to him. He was coming the way he was.

MR. JACKSON: He might very well, he might [51] like our clients.

The other one is Amanda Clark. Although she was convicted of possession of marijuana, the Clerk before the Court came in asked whether or not anybody had not had their rights restored. That could be a misdemeanor. So they could be a first offender.

THE COURT: Well, I asked her, and people generally, I find, are reluctant to totally respond to the Clerk. I get a better response.

MR. JACKSON: Yes, sir. Thank you.

THE COURT: And you adopt all of his objections.

MR. HUNT: Yes, Your Honor.

THE COURT: All right.

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APPENDIX C — SUMMONS OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF GEORGIA FOR JURY SERVICE

SUMMONS FOR JURY SERVICE

• **from UNITED STATES DISTRICT COURT**

SOUTHERN DISTRICT OF GEORGIA
P. O. BOX 8286
SAVANNAH, GEORGIA 31412
GRAND JUROR

August 3, 1999 10:00 A.M.
Month Date Time

THIS COURT SUMMONS YOU TO APPEAR FOR JURY DUTY AT THE TIME AND PLACE SHOWN. YOUR TERM OF SERVICE IS DETERMINED BY THE COURT. IF THE EXACT DAY TO REPORT IS NOT GIVEN YOU WILL BE NOTIFIED LATER. IF AN EXACT DATE IS SHOWN YOU MUST REPORT ON THAT DAY UNLESS A PHONE MESSAGE OR OTHER NOTICE TELLS YOU OTHERWISE.

YOU WILL SERVE IN U.S. COURT HOUSE AT
3rd Floor Courtroom
U. S. COURTHOUSE
125 BULL STREET
SAVANNAH, Georgia

Phone No. 1-800-473-3116

* * *

Appendix C

CAUTION: NOTE ITEMS 2 & 3 ON BACK
MALE JURORS ARE EXPECTED TO WEAR COLLAR, TIE, AND COAT WHILE FEMALE JURORS WEAR PANTSUIT, SKIRT OR DRESS . . . NO JEANS/SHORTS ALLOWED.

JURORS WILL RECEIVE A DAILY ATTENDANCE FEE OF $40 PLUS EITHER MILEAGE OR THE COST OF PUBLIC TRANSPORTATION FROM RESIDENCE TO COURT AND RETURN. U.S. GOVERNMENT EMPLOYEES, INSTEAD OF THE ATTENDANCE FEE, WILL RECEIVE THEIR REGULAR PAY WITHOUT DEDUCTION FROM AUTHORIZED LEAVE.